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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,365	02/27/2004	Patrik Denoth	34097/US	5140
74307	7590	06/04/2009		
Dorsey & Whitney LLP IP Department, ATTN: Disetronic Licensing AG 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498			EXAMINER VU, QUYNH-NHU HOANG	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 06/04/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/789,365

**Applicant(s)**

DENOTH ET AL.

**Examiner**

QUYNH-NHU H. VU

**Art Unit**

3763

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-18, 28, 35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18 and 28 is/are allowed.
- 6) ☒ Claim(s) 35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

Amendment filed on 03/16/09 has been entered.

Claims 1-7, 9-18, 28, 35-36 are present for examination.

Claims 8, 19-27, 29-34 are cancelled.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 35 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation "the connecting head 22 comprise a connecting cannula 22 and at least connector region of the first fluid guiding system, guided into the port casing" is mis-descriptive.

As Fig. 2 shows that an implantable first fluid guiding system 1 and connecting head 22 are separate elements; beside that the implantable first fluid guiding system is not a part belong to connecting head 22.

Does Applicant mean that: the connecting head element comprises at least a connector region connect with the first fluid guiding system?

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 25 recites the limitation "the fluid guiding system" in line11. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Svensson et al. (US 5,098,397).

As best as understood, Svensson discloses a port system, comprising:

an implantable first fluid guiding system comprising a disc-shaped supporting body;

an external second fluid guiding system 4 with a connecting head at one end;

a percutaneously implantable port for establishing a fluid connection between said fluid guiding systems, said port comprising a port casing 8, which forms a first connecting element;

and a connecting device which comprises a second connecting element on an upper side of the connecting device;

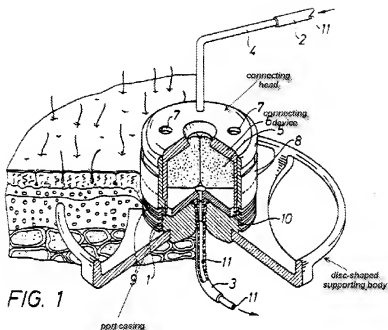
wherein said connecting head is fastened to said port casing by a releasable fastening engagement of said connecting elements;

wherein the connecting head comprises a connecting cannula 3 and said connecting cannula and at least one connector region of the first fluid guiding system, guided into the port casing, exhibit the same flow cross-section, in order to avoid or at least minimize turbulence in the fluid;

wherein the first fluid guiding system feeds in or into the port casing, flush with said connecting cannula, in order to avoid or at least minimize turbulence in the fluid at a transition between the connecting cannula and the first fluid guiding system.

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Claims 35-36 are alternatively rejected under 35 U.S.C. 102(b) as being anticipated by Klein et al. (US 4,488,877).

As best as understood, Klein discloses a port system, comprising:

an implantable first fluid guiding system comprising a disc-shaped supporting body 10, 18 or 13;

an external second fluid guiding system 36 with a connecting head at one end 42;

a percutaneously implantable port for establishing a fluid connection between said fluid guiding systems, said port comprising a port casing, which forms a first connecting element;

and a connecting device which comprises a second connecting element on an upper side of the connecting device;

wherein said connecting head is fastened to said port casing by a releasable fastening engagement of said connecting elements;

wherein the connecting head comprises a connecting cannula/needle and said connecting cannula and at least one connector region of the first fluid guiding system, guided into the port casing, exhibit the same flow cross-section, in order to avoid or at least minimize turbulence in the fluid;

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wherein the first fluid guiding system feeds in or into the port casing, flush with said connecting cannula, in order to avoid or at least minimize turbulence in the fluid at a transition between the connecting cannula and the first fluid guiding system.

#### ***Allowable Subject Matter***

Claims 1-7, 9-18 and 28 are allowed.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 35-36 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH-NHU H. VU whose telephone number is (571)272-3228. The examiner can normally be reached on 6:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763

Quynh-Nhu H. Vu  
Examiner  
Art Unit 3763